HOUSE . . . . No. 53

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES,
STATE HOUSE, BOSTON 33, November 3, 1953.

To the Honorable Senate and House of Representatives, State House, Boston, Massachusetts.

GENTLEMEN: —

We have the honor to submit herewith as a part of our annual report for the fiscal year ending June 30, 1953, drafts of legislation which the Department respectfully recommends for enactment in the next ensuing session of the General Court.

The attached bills have been reviewed by Counsel of the House of Representatives in accordance with law.

Respectfully submitted,

DEPARTMENT OF PUBLIC UTILITIES.

DAVID M. BRACKMAN,
Chairman.
THOMAS A. FLAHERTY.
EDWARD L. FORD.
JOSEPH F. CLEARY.
JOHN M. WHOULEY.

RECOMMENDATIONS.

I.

The present scope of section 17A of chapter 164 of the General Laws is limited in that, while it prohibits loans by gas or electric companies without the consent of the Department, it does not pretend to cover investments in stocks or other securities. Section 17A was enacted after a particular utility suffered a heavy loss on account of an upstream loan. It seems advisable to extend the scope of this section before a similar loss is incurred by some utility on another kind of investment. It seems to us to be apparent that no utility should be permitted to use its funds for purposes other than utility business without full supervision by the Department. This bill was submitted to the 1952 Legislature, but was not reported out of committee. It was again submitted to the 1953 Legislature and was opposed by the very company whose difficulties caused the original enactment of section 17A. The bill was ultimately defeated in the Senate.

II.

In connection with its recommendations to the 1953 Legislature, the Department submitted legislation which would give it power to allocate supplies of gas in times of public emergency. As we then pointed out, the desirability of this legislation is evidenced by the fact that a situation actually arose in connection with distribution of natural gas in New York State several years ago, when the transmission company was compelled by order of the Federal Power Commission to cut down the supply of natural gas to certain distributing companies. We further pointed out that most of the gas companies within the State are retaining adequate stand-by facilities so that they can maintain their supply of gas through the use of manufactured gas in the event of such curtailment in the availability of natural gas. While the Department has no jurisdiction to control the distribution

of natural gas, it should have authority to compel the local distributing companies to release for the benefit of companies not having adequate manufacturing facilities, such supplies of gas as might enable the latter companies to continue operations in the event of a shortage.

The proposed enactment is based upon the existing statute in New York and has received the considered attention of able counsel in that State. We believe it is not an unlawful burden on interstate commerce. Prudent foresight seems to demand that machinery be established to meet any such situation before it eventuates. The situation in New York State to which we refer was handled through voluntary co-operation on the part of the utilities. We do not believe, however, that such a vital matter should be left the subject of a voluntary program.

III.

Most persons as a matter of course would give up the use of a party line when another person on the line claims an emergency. Unfortunately, this is not invariably true, and there have been some serious cases reported where a person using a party-line telephone has refused to free the line for an emergency call. The New England Telephone and Telegraph Company is presently unable to furnish individual-line service to all persons who request it, and have had numerous complaints as to party-line interference of this nature. The State of Washington in the 1953 legislative session enacted a statute making the failure to clear a party line upon a claim of emergency a misdemeanor. There would be serious difficulties, as a practical matter, in obtaining a conviction in such a case, but the presence of such an enactment, if properly publicized, would unquestionably help in some measure in avoiding situations of this nature. Proposed legislation designed to achieve this end is attached and recommended for enactment.

IV.

The Department recommended to the 1953 Legislature that legislation be enacted giving it more concrete power

over the rates and practices of contract carriers by motor vehicle. This proposed legislation then failed of passage. It is again submitted with the Department's recommendation for enactment.

The annexed proposal differs from that submitted last year in that it does not contain provisions which would bind contract carriers, without exception, to follow the rates of common carriers for similar service. The Department has concluded such a provision would probably be very difficult to enforce and that the existing legislation is adequate. However, the provisions of the existing law regarding the jurisdiction of the Department over the rates of such carrier should be broadened to permit the Department to suspend the rates contained in a proposed contract pending determination as to their reasonableness.

V.

In section 9 of chapter 159B of the General Laws, the Department is directed to issue a distinguishing plate to a carrier. Some carriers have defended their failure to obtain current plates on the ground that the Department should automatically reissue such plates from year to year. In order to make clear that it is the carrier's duty to comply with the law, it is suggested that section 9 be amended to place the burden upon him for the initiation of the renewal application.

The fee specified in section 9 for authority to transfer an existing plate once issued from one vehicle to another is one dollar. The other fees in the motor vehicle division have been increased in recent years and it seems desirable to increase the fee for such transfer permit from one dollar to two dollars.

Legislation designed to amend section 9 in accordance with the foregoing is attached and recommended for enactment.

VI.

Enforcement of section 10 of chapter 159B relating to interstate operators has met with the same difficulty

as noted in connection with section 9 in that it is not clear that it is the duty of the carrier to apply for renewal plates. Legislation designed to clarify this section is submitted herewith.

VII.

Section 10A of chapter 159B provides for the issuance of duplicate plates upon application to replace those lost, mutilated or destroyed. There is, however, no provision requiring the carrier to replace such plates when they have become mutilated or damaged, and our inspectors have found carriers who still display plates on their vehicles after the numbers have become completely illegible. Legislation giving the Department authority to compel the replacement of such plates is annexed hereto.

VIII.

Under section 10B of chapter 159B of the General Laws, plates may be issued by the Department for use by a carrier upon vehicles leased by it. There has been substantial abuse of this privilege which has made it very difficult properly to police the carriers' operations. The carriers, both intrastate and interstate, should be required to maintain adequate records from which the Department can determine whether this privilege is being abused by so-called "gypsy" operations and can maintain order within the industry. It is further suggested that the substantial burden placed upon the Department by this practice justifies a substantial charge for the plates so issued. Legislation designed to meet this situation is attached hereto and recommended for enactment.

IX.

Under section 12 of chapter 159B of the General Laws, the Department is given power to revoke certificates issued to a carrier after notice and public hearing. Under the interpretation which has been given to other statutes, a notice is not complete until it is received by the person

to be notified, unless otherwise expressly provided and mailing is only evidence of notice (*Regan* v. *Atlantic Refining Co.*, 304 Mass. 353). It would seem that the mailing of such notice to the address of the carrier as it appears on the Department's records should be enough. If there is any excuse for failure to appear in such case, the burden should be on the carrier to prove lack of notice rather than on the Department to prove notice.

The present section 12 also places on the Department the burden of showing that a violation of its rules is wilful. The general penalty section, section 21, was amended by section 7 of chapter 664 of the Acts of 1951 to do away with this requirement, and section 12 should also be amended accordingly.

Legislation designed to effect the foregoing changes is annexed hereto.

X.

Section 19 of chapter 159B of the General Laws forbids discrimination in rates and the use of false bills of lading, etc. The section as presently worded requires proof that the carrier violated its provisions knowingly or wilfully. Consistent with the amendment to the general penalty act, section 21, it seems that this requirement should be stricken from the statute in order that the burden of proving wilful violation should not be on the Department. A proposed amendment of section 19 to accomplish this result is submitted herewith.

XI.

At the time section 20 of chapter 159B of the General Laws was enacted, the police commissioner of the city of Boston claimed some jurisdiction over the operations of trucks within the city limits. While this particular situation no longer exists, the Department has been advised of attempts by other municipal authorities to refuse to permit certificated carriers from operating within the municipality without procuring a local license. This appears to be contrary to the intent of the Legis-

lature to vest the Department with the complete regulation of these carriers, and section 20 should be amended to centralize the licensing authority within the Department and explicitly state that the local officials shall have no such power. If the industry is to be properly policed, such a legislative declaration appears to be necessary, and recommended legislation accordingly is submitted herewith.

XII.

The Department has issued a number of charter licenses under chapter 159A of the General Laws which authorized the carrier to perform only limited functions such as the carriage of school children to events of public interest or the carriage of worshipers to church services. Under such limited certificates, the carriers may obtain insurance at relatively low rates. The Department has been advised that it has no power under the present statute to issue charter licenses except for unlimited service, and preliminary steps have been taken to correct the outstanding certificates.

There seems to be no reason why an operator who can perform these limited operations economically should not be allowed to do so, and we are submitting herewith legislation designed to permit the issuance of limited charter licenses and for the validation of those which have been heretofore issued.